IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/04/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.NO.6910 OF 2000
AND
W.M.P.NO.10302 OF 2000

Rajeswari Venkatesan. .. Petitioner

-Vs-

1. The Govt. of Tamil Nadu rep. by
its Secretary, Housing and Urban
Development Department, Chennai.9.

2. The Tamil Nadu Housing Board,
rep. by its Managing Director,
Chennai.35.

3. The Special Tahsildar, (L.A.)
Neighborhood Scheme, Salem. .. Respondents.

Petition under Article 226 of the Constitution of India praying to
issue a writ of Certiorarified Mandamus as stated therein.

For Petitioner: Mr.K.Selvaraj.

For Respondents: Mr.M.Mahalingam, G.A.-R2.
Mr.D.Veerasekaran-R1.

:O R D E R

The petitioner has filed this writ petition praying to issue a writ of certiorarified mandamus calling for the records of the first respondent relating to his letter No.2063/1 Land Acquisition 4(2)/97 dated 23.2.2000 and quash the same and direct the Respondents to reconvey the lands of the petitioner to the petitioner.

2.In the affidavit filed in support of the writ petition petitioner would submit that on 15.12.1979, she purchased a tiled house and lands at Jagir Ammapalayam village by a registered sale deed and thereafter, she made alterations to the house and put up a pucca building; that from the date of purchase, she was continuously residing in the house along with her family members; that while this being the position, the respondent initiated

acquisition proceedings against her lands and other lands for the purpose of neighborhood scheme proposed by the second respondent; that the notification under Section 4(1) of the land acquisition Act was issued in G.O.Ms.No.525, (Housing and Urban Development) dated 25.5.1985 and declaration under Section 6 was issued in G.O.Ms.No.1408 (Housing and Urban Development) dated 3.9.1986 ; that she filed writ petition in W.P.No.11039 of 1986; that this Court by order dated 28.11.1991, allowed the writ petition and quashed the proceedings against her lands; that after a period of four years, the respondents filed W.A.No.1247 of 1994 against the order of this Court in W.P.No.11039 of 1986; that it is stated by the Government in the counter affidavit that certain lands which could be exempted without detriment to the scheme were exempted by the Government and the requisitioning body namely the Tamil Nadu Housing Board, in its resolution No.678/1986 had resolved to re-convey the lands where buildings have come up and occupied by the land owner by way of reconveyance; that the Division Bench of this Court by order dated 4.10.1996 allowed the writ appeal with the following direction:
"As in these cases it is submitted that all the writ petitioners have put up the construction as such they would be eligible to seek reconveyance as stated in paragraph 7 of the counter-affidavit. If such a request is made,the Government shall inquire into and determine whether such a request is in conformity with the resolution 67 of 1986 dated 2.7.1986 passed by the Housing Board and in case they satisfy the condition laid down in the resolution re-conveyance shall be made in their favour."

3. The petitioner would further submit that pursuant to the order of this Court, she sent a detailed representation dated 28.3.1997 to the respondents requesting to exempt her lands from acquisition proceedings and to re-convey same on receipt of necessary payments; that since no reply or notice came from the first respondent, she sent a remainder dated 2.4.1998 to the first respondent to exempt her lands from the acquisition since she had satisfied the condition laid down in the resolution and she had spent her entire savings and earnings towards construction of her residential building and to develop farm with more than 100 coconut trees; that she had also constructed a granite stone wall covering her entire lands to protect the land and building; that as on date she is in possession and enjoyment of her lands sought tobe acquired by the respondents and she is also cultivating her lands; that while this being the position, the first respondent by letter dated 23.2.2000 rejected her representation dated 28.3.1997 after a long period of three years on the sole ground that her building was constructed after the issuance of section 4(1) notification and it is needed for the neighborhood scheme; that the first respondent kept quite for more than three years even though she sent representation and remainders; that since the respondents have exempted certain lands notified along with the petitioners land, the lands of the petitioners should have also been exempted; that the respondent has not taken possession of the lands of the petitioner till date and the petitioner is in possession and enjoyment of the same and she is also residing along with her family members in the residential building situated in the lands; that as on date the petitioner is also cultivating the lands. On such grounds, the petitioner would file this writ petition praying for the relief as extracted supra.

4. During arguments, the learned counsel for the petitioner would cite a judgment reported in 1996 W.L.R.761 (STATE OF TAMIL NADU, ETC., V. PRAMELA RAJARAM & OTHERS)wherein a Division Bench of this Court has held which is extracted in para No.2 supra.

5. As against the writ petition, no counter affidavit has been filed on the part of the Government, as a result of which pertaining to the entire facts and circumstances of the case as brought forth in the writ petition, this Court is in dark. However, the learned Government Advocate appearing on behalf of the second respondent would formally oppose the above writ petition on reason that the Government have considered the representation of the petitioner in the light of the opinion of the requisitioning body as per its letter dated 10.11.1999, requiring the land for their purpose and has ultimately rejected the claim of the petitioner that the petitioner's land could be exempted and reconveyed.

6. On the part of the learned counsel appearing on behalf of the petitioner tracing the history of the case from the beginning, would not only say that time and again this Court has decided against the acquisition of the subject matter from the petitioner on many grounds and even the Division Bench of this Court in the writ appeal No.1247 of 1994 dated 4.10.1996 in consideration of the counter filed on the part of the Government, conceded that certain lands could be exempted without detriment to the scheme and further revealed that the requisitioning body namely the Tamil Nadu Housing Board itself in its resolution No.67 of 1986 dated 2.7.1986 had resolved to reconvey the lands where buildings have come up and occupied by the land owner by way of reconveyance and allowed the writ appeal to consider the case of the petitioner in the light of the resolution. But however, without proper consideration of the case of the petitioner the Government has passed its order impugned rejecting the case of the petitioner for reconveyance while it

has no proper or convincing reasons to assign in the impugned order contrary to facts. On such arguments, the learned counsel would pray to allow the writ petition as prayed for.

7. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioner, the land lady has filed the above writ petition praying not only to quash the Government letter No.2063/1 Land Acquisition 4(2)/97 dated 23.2.2000 but also to direct the respondents to reconvey her lands to herself. Tracing the history of the case the petitioner would come forward to allege that she purchased the land with the tiled house under a registered sale deed dated 15.12.1979 and subsequently,effecting alterations, she made the house a pucca building and is residing therein continuously and in an unobstructed manner for the unbroken period of the last more than two decades. The petitioner's further case is that while so, the Government of Tamil Nadu by its G.O.Ms.No.525,(Housing and Urban Development) dated 25.5.1985 issuing notification under Section 4 (1) of the Tamil Nadu Land Acquisition Act sought to acquire her land and building and also issued declaration under Section 6 of the Act by its G.O.Ms.No.1408 (Housing and Urban Development) dated 3.9.1986.

8. The further case of the petitioner is that she filed a writ petition in W.P.No.11039 of 1986 challenging the acquisition of her property and the said writ petition was allowed by this Court by order dated 28.11.1991 quashing the proceedings against the petitioner's land; that on an appeal preferred by the Government the Division Bench of this Court in W.A.No.1247 of 1994 by order dated 4.10.1996 while allowing the appeal directed the Government to consider the representation of the petitioner inquiring into and determining the request of the petitioner in conformity of the resolution No.67 of 1986 dated 2.7.19 86 passed by the Tamil Nadu Housing Board and in case they satisfy the conditions laid down in the resolution, reonveyance shall be made in favour of the petitioner pursuant to which on repeated representations of the petitioner, particularly dated 28.3.1997, 2.4.1998 and such others, the Government have reluctantly come forward to pass the impugned order almost after a lapse of four years, thereby rejecting the request of the petitioner to exempt her land from the acquisition proceedings and reconvey the same in favour of the petitioner.

9. A glance made into the order impugned, whereunder the Government have rejected the plea of the petitioner would reveal that on the part of the Government no proper application of mind has been exercised as it is required in the circumstance of the case, but has passed the order in a slip shod manner thereby rejecting the petitioner's request on vague, untenable and evasive reasons alleged thereby without giving any detail pertaining to the inevitable circumstances under which the Government is incumbent to acquire this property nor answering the direction of the Division Bench of this Court as to how the Government is not in a position to reconvey the land of the petitioner in spite of having considered the Tamil Nadu Housing Board's resolution No.67 of 1986 dated 2.7.1986 and hence the impugned order passed by the Government does not at all in any manner indicate either the inevitability of the acquisition of the land and building of the petitioner or the urgency of the same especially when the Government have to cautiously consider the direction of the Division Bench of this Court on the request made on the part of the petitioner through repeated representations. After a lapse of four years in a lethargic manner the Govt. have considered the direction of this Court and therefore, all these circumstances coupled with the fact of the resolution passed by the Tamil Nadu Housing Board only leads this Court to consider the following judgment of the learned single Judge of this Court while deciding a case of like nature in W.P.No.2813 of 1988 following the dictum of the Honourable Apex Court delivered in STATE OF KARNATAKA AND OTHERS vs. NARASHIMAMURTHY AND KOTHERS REPORTED IN 1995 (V) SCC 524 giving the condensed form of the judgment of the Apex Court holding that the right to shelter is a fundamental right under Article 19(1) of the Constitution of India has insisted that the State has to provide facilities and opportunities to build a house. I quote the following paragraph of the judgment.
"Right to shelter is a fundamental right under Art.19(1) of the Constitution to make the right meaningful to the poor, the State has to provide facilities and opportunity to build a house. Acquisition of the land to provide house sites to the poor house-less is a public purpose as it is a constitutional duty of the State to provide house sites to the poor."
In the light of the said pronouncement of the Supreme Court, in my considered view, it is neither purposeful nor is it meaningful nor is it just nor

reasonable to deprive the portion of the 15 cents of the land, where the petitioner had put up constructions and has been living there for decades together in effective occupation of the same till date. The State while exercising powers of eminent domain under the Land Acquisition Act to provide accommodation or shelter should also see that the valuable houses, the petitioner or her ancestor had put up and where she has been living from her birth should not be pulled down or render the petitioner homeless and throw out her family to street.
"The Fundamental right of the petitioner shall not be ignored or brushed aside while acquiring the land for purpose of putting up houses by Tamil Nadu Housing Board for the benefit of the affluent or resourceful urbanities, while depriving the poor villager,who is not in a position to complete. The respondents should not act unreasonably and deprive his fundamental right or shelter or destroy the right of shelter already owned by the petitioner. The State also should see that the very fundamental right of shelter, which shelter the petitioner is already possessed, should not be deprived. The Constitutional duty of State to provide shelter could also be achieved by the petitioner being allowed to retain the house and allow him to live there."
"It is rather surprising for the requesting authority or for that matter for respondents to ignore the petitioner's fundamental right of shelter, as a matter of routine by just stating that the Writ petitioner could apply to Housing Board afresh under ex-owner category. By such a course there is only a chance of getting alternate accommodation at a higher cost on a later date, which will be beyond his means. It is unreasonable to uproot the villager as against the well settled and affluent urban population, whose demand is sought tobe met by the schemes of the Housing Board. There is no justifiable reason at all to proceed further with acquisition and deny the fundamental right of the petitioner to shelter and acquire his only residential house or plot resulting in dislocation of the petitioner and his family. By the compensation the petitioner who is being rendered house-less and uprooted, will not be in a position to secure allotment or even put up a house as day by day the cost of construction is in the increase. At the same time, the acquisition may deny the house already owned and further deny him the sentiments he has f or his house, where he is living since childhood."
"There is every justification for the fifteen cents being excluded from acquisition as the petitioner is actually residing with his family in the house put up thereon and living there with his kith and kin. There is no justification for petitioner and his family being uprooted, thrown out and displaced and on the other hand, the housing Board could very well, with slight change or lease deviation proceed with its scheme."

10. On a overall consideration of the entire facts and circumstances encircling the whole case covering the subject matter of the writ petition, particularly when this Court is apprised of the fact of the existence of the pucca dwelling house surrounded by coconut trees and farming and giving vent to the spirit of the judgment rendered by the Honourable Apex Court adopting which the learned single Judge of this Court and in further consideration of the decided cases extracted supra, this Court is led to the only conclusion to consider the case of the petitioner-landlady answering the writ petition in the affirmative. It is relevant to further consider that right from the date of purchase till date it is the petitioner who is occupying the land in

question making use of the building therein as a dwelling house, and further from the lethargic attitude ado pted in not giving a shape to the scheme said to have been formed by the Government in the last 17 years, the only conclusion that could be arrived at by this Court is to allow the above writ petition granting the reliefs as prayed for by the petitioner therein.

In result,
(i)the above writ petition succeeds and is allowed as prayed for;
(ii)the order impugned in the first respondent's letter No.2063/1 Land Acquisition 4(2)/97 dated 23.2.2000 is hereby quashed;
(iii)consequently, the respondents are hereby directed to reconvey the land of the petitioner to herself within 60 days from the date of receipt of the copy of this order by the first respondent;
(iv)however, in the circumstances of the case, there shall be no order as to costs.

V.KANAGARAJ,J

Index:Yes
Internet:Yes
gr.

□